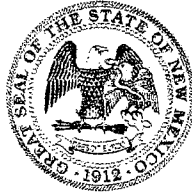


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December 12, 2007

MEMORANDUM

TO: Legislative Education Study Committee

FR: Peter van Moorsel

PvM

RE: STAFF REPORT: TRUANCY & DELINQUENCY NOTICES, HJM 40/SJM 36

Introduction

Truancy is a serious issue that negatively affects students nationwide. According to the National Conference of State Legislatures (NCSL), truancy is a risk factor for a host of problems, including substance abuse, youth violence and delinquency, and is a precursor to poor academic performance, ranging from falling behind in class work to dropping out of school. The 2007 LESC Interim Workplan includes a staff report on truancy and delinquency notices and a presentation on duplicate memorials, House Joint Memorial (HJM) 40/Senate Joint Memorial (SJM) 36, that request a study of:

- the intervention and enforcement provisions in both the *Compulsory School Attendance Law* and the *Children's Code*; and
- the issues surrounding the timely notification of public and private schools when a student is the subject of a delinquency petition.

This report includes:

- a review of the Legislative Education Study Committee's (LESC) study of truancy in New Mexico;
- New Mexico laws governing school attendance;
- a summary of the Public Education Department's (PED) Habitually Truant Report;
- funding of truancy prevention programs;
- an analysis of selected district truancy policies; and
- a report on the work group convened by PED to respond to HJM 40/SJM 36.

Revised 3/11/08

The Study of Truancy in New Mexico

The LESC has been examining the issue of truancy at least since the late 1990s, when the committee heard testimony about such topics as child abuse reporting and outcomes; prevention and intervention programs that target students at risk, especially those funded through the at-risk factor included in the Public School Funding Formula beginning in school year 1996-1997; and the performance and attendance history of American Indian students.

During the 2000 interim, the LESC heard testimony that attendance and truancy provisions under current law were generally not enforced because the inconsistency between the two primary statutes – the *Compulsory School Attendance Law* and the *Family in Need of Services Act* – causes confusion and because the enforcement of compulsory school attendance has been a low priority in the district court system. In 2001, the Legislature introduced LESC-endorsed legislation that would have amended the *Compulsory School Attendance Law* to be consistent with the *Family in Need of Services Act*; however, it did not pass.

During the 2003 interim, the LESC included in its workplan a study of the issue of truancy, with a focus on keeping kids in school. At the request of the LESC Chair, the LESC Director convened the statewide, broadly representative LESC Truancy Work Group to examine truancy prevention, including issues of law; to review past and current efforts to address the issues; and to provide a report and recommendations to the LESC. The recommendations of the LESC Truancy Work Group were based upon a framework consisting of three stages: (1) early identification of possible truancy; (2) intervention methods and strategies at the school level to prevent truancy; and (3) a response system for addressing issues that lead to habitual truancy. The recommendations also focused on the two primary statutes. For the *Compulsory School Attendance Law*, the work group recommended amendments to:

- require local school boards to establish attendance and truancy policies that provide early identification of attendance problems and intervention measures to prevent truancy;
- define certain terms related to truancy;
- clarify and streamline the enforcement process and responsibilities for truancy; and
- increase the penalty for first violations of the law.

For the *Family in Need of Services Act*, the work group recommended introducing a memorial requesting the Children, Youth and Families Department (CYFD), in collaboration with PED and the Department of Health (DOH), to study and recommend changes to the *Family in Need of Services Act* and to consider the provisions of the *Compulsory School Attendance Law* in addressing and preventing truancy.

Other testimony from the work group identified several areas to be addressed in order to develop a truancy reduction strategy. Among them was the application of more resources to help identify risk factors in the lives of children who are truant or may be at risk for truancy and then to provide the necessary intervention services. Another recommendation was the need to build widespread community support that includes parents and businesses as well as schools, law enforcement officials, and the courts. The work group further suggested a need for increased support for out-of-school activities such as tutoring, mentoring, and service learning programs to serve children who have become or might become truant in order to help them stay in school. Finally, the work group recommended that PED begin to collect data on truancy from the school districts in order to clarify the dimensions of the problem on a statewide basis.

As a result of the work group's recommendations, in 2004 the LESC endorsed legislation that was enacted to amend the *Compulsory School Attendance Law* to:

- define “truant,” “habitual truant,” and “unexcused absence”;
- require local school boards to establish attendance and truancy policies that provide early identification of attendance problems and intervention measures to prevent truancy and that prohibit out-of-school suspension and expulsion from being used as a punishment for truancy; to report truancy rates to PED; and to require written notice to the parent, guardian or custodian of a student who is habitually truant;
- designate the local juvenile probation office as the lead referral agency for habitual truancy;
- allow charges against a parent to be filed in magistrate court or district court; and
- provide for the suspension of an habitual truant's driver's license by the Children's Court for up to 90 days for the first finding of habitual truancy and for up to one year for a subsequent finding.

Also in 2004, the LESC endorsed a memorial requesting CYFD, in collaboration with PED and DOH to study and recommend changes to the *Families in Need of Services Act* and to consider the provisions of the *Compulsory School Attendance Law* in addressing and preventing truancy; however, the memorial did not pass during the 2004 legislative session.

In 2005, the Legislature addressed inconsistencies relating to the withdrawal of a student for school absences in two sections of the *Public School Code* by enacting legislation to amend the definition of “membership” in the *Public School Finance Act* to prohibit a school district from withdrawing a student who has been identified as a truant student.

In fall 2005, in order to improve early notification and intervention in cases of truancy, PED contracted for a statewide school protocol booklet to facilitate closing the gaps between the school and juvenile justice systems. The booklet, titled “A guide to Truancy Referrals” was completed in summer 2006, is posted on the PED website, and, according to PED, is distributed to school districts by the department's Statewide Truancy Coordinator. However, it is unclear to what extent school districts utilize the guide in establishing their truancy/attendance policies. The guide:

- highlights the provisions of the *Compulsory School Attendance Law*;
- suggests that schools develop a written protocol that requires school personnel to take appropriate action after three, five, seven, and 10 unexcused absences and provides recommendations for such actions;
- describes the procedure by which the juvenile probation office shall refer the family of a habitually truant student to the Protective Services Division of CYFD; and
- highlights initiatives undertaken by PED, CYFD, and DOH to review current statute in the *Public School Code* and the *Children's Code* in an attempt to strengthen and improve these laws in dealing with habitual truants and families in need of services.

Laws Governing School Attendance

Authority for enforcing compulsory school attendance in New Mexico is found in the state constitution and in three statutes. The New Mexico State Constitution in Article XII Section 5 [compulsory school attendance] states, “Every child of school age and of sufficient physical and

mental ability shall be required to attend a public or other school during such period and for such time as may be prescribed by law.”

Among its provisions, the *Compulsory School Attendance Law* (Attachment 1) in the *Public School Code*:

- defines the age at which a child is required to begin attending school, the age at which a child may legally drop out of school, and the number of unexcused absences at which a student is considered legally truant;
- requires school officials to provide parental notification by certified mail or personal service of three or more successive absences from school, and provides for exemptions;
- includes misdemeanor sanctions against parents who are found to cause the student’s nonattendance at school;
- requires, if violations of compulsory school attendance persist after written notice, that the student be reported to the probation services office of the judicial district where the student resides for an investigation on whether the student shall be considered a neglected child, or a child in a family in need of services pursuant to provisions of the laws in the *Children’s Code*;
- defines the terms “truant,” “habitual truant, and “unexcused absence”;
- requires school districts to take attendance for every instructional day in every school or school program in the district; and
- requires every district to report truancy and habitual truancy rates to PED and to document efforts made to keep truants and habitual truants in an educational setting. (This requirement is in alignment with the federal *No Child Left Behind Act of 2001* (NCLB) which, under Title IV, Part A, *Safe and Drug Free Schools and Communities Act*, requires states to report truancy rates on a school-by-school basis.)

The *Family Services Act* [formerly the *Families in Need of Services Act*] (Attachment 2) in the *Children’s Code*, recognizing that many instances of a child’s behavior are symptomatic of a family in need of services, provides for prevention, diversion, and intervention services for a child or a family. One definition of a “child or family in need of services” is “a family whose child’s behavior endangers the child’s health, safety, education, or well-being.”

The *Families in Need of Court-Ordered Services Act* (Attachment 3) in the *Children’s Code* provides services for a family in need of services through court intervention when voluntary services have been exhausted. Included in the definition of a “family in need of court-ordered services” is a “family whose child, subject to compulsory school attendance, is absent from school without an authorized excuse for more than ten days during a school semester.”

At issue is the inconsistency that exists between the *Compulsory School Attendance Law* of the *Public School Code* and the *Family in Need of Court-Ordered Services Act* of the *Children’s Code* related to unexcused absences. For example:

- in the *Compulsory School Attendance Law* habitual truancy is defined as a student who has accumulated the equivalent of ten or more unexcused absences within a school year; and
- the *Children’s Code* defines a “family in need of court-ordered services” is defined as a family whose child, subject to compulsory school attendance, is absent from school without an authorized excuse more than ten days during a school semester.

It appears that this inconsistency in definitions could result in a student being referred by the student's school for court-ordered services to address the student's truancy, although the student, pursuant to the *Children's Code*, is not considered to be in a "family in need of court-ordered services." This situation could present problems in addressing a student's truancy problem in a timely manner.

Although not passed during the 2007 Legislature, HB 449, *Truancy Reporting and Referral*, would have aligned the definition of a habitually truant student with the *Compulsory School Attendance Law* by changing the definition in the *Family Services Act* to include "a family whose child has accumulated the equivalent of 10 or more unexcused absences within a school year."

PED Habitually Truant Report

The *Compulsory School Attendance Law* requires that class attendance be taken for every instructional day in every public school or school program in the school district; and requires that districts report truancy and habitual truancy rates to PED. In addition, NCLB requires states to report truancy rates on a school-by-school basis. As a result of the recommendations of the work group convened by the LESC during the 2003 interim, PED began collecting truancy data beginning in school year 2004-2005. To report truancy data to PED, school district staff enter attendance data into the Student Teacher Accountability Reporting System (STARS).

PED provided LESC staff with a document titled the Habitually Truant Report (Attachment 4) which lists the number of unexcused absences, the number of habitually truant students, and the number of habitually truant students as a percentage of enrollments for all districts, with the exception of Dulce, Grants, and Portales, who did not report truancy data.

Issue: State law defines "habitually truant" as a student who has accumulated the equivalent of 10 or more unexcused absences within a school year, and requires that school districts report truancy and habitual truancy rates to the department in a form and at such times that the department determines; and PED has determined that districts must report unexcused absences as either half or full days.

The manner used by districts to report unexcused absences poses some difficulty in the interpretation and evaluation of habitual truancy data because unexcused absences define the habitual truant. Since districts establish their own policy about what constitutes a whole day, a half day, or a missed class two districts may report a different number of unexcused absences for two students who have missed the same amount of class. Because of the latitude PED gives districts in reporting unexcused absences, the STARS data does not allow the reader to determine whether each unexcused absence was a full day, a half day, or a single missed class. This difficulty in interpreting unexcused absence data creates further difficulty in evaluating habitual truancy data, because by law, the latter is based on the former.

In addition, the table submitted by the department represents the frequency with which a district has recorded an unexcused absence, not the equivalent number of full days of school that were missed. For example, if a student is unexcused for two half days, it is reported as two unexcused absences, though the equivalent of one full day of school was actually missed.

Keeping this issue in mind, the department's report may still provide some indication of the magnitude of the truancy problem in New Mexico for those districts reporting truancy data for school year 2006-2007:

- statewide, school districts reported approximately two million unexcused absences - 120th day enrollment for school year 2006-2007 was 326,158, indicating a statewide average of 6.3 unexcused absences per student;
- unexcused absences in public school districts ranged from five in Elida (student enrollment, 141) to 1,012,225 in Albuquerque (student enrollment, 94,649);
- the proportion of unexcused absences to district enrollment per enrollment (based on 120th day numbers) ranged from 0.02 unexcused absences/student in Santa Rosa to 10.60 unexcused absences/student in Albuquerque;
- statewide, districts reported 60,183 habitually truant students, representing a statewide average of approximately 19 percent of the 120th day enrollment;
- the number of habitually truant students ranged from zero in several districts, to 29,831 in Albuquerque;
- the percentage of 120th day enrollment reported as habitually truant ranged from zero in these same districts to 34.54 percent in Los Lunas, 33.38 percent in Cuba, 33.33 percent in Jemez Mountain, 31.52 percent in Albuquerque, and 30.83 percent in House; and
- for school districts with 120th day enrollment of 300 or fewer, the percentage of students reported as habitually truant in school year 2006-2007 was approximately 6.2 percent, less than one-third of the statewide average. Although two small districts did report a rate of habitual truancy of approximately 30 percent, the relatively low average habitual truancy rate among very small districts could indicate that due to smaller schools and more community involvement, students are less anonymous and therefore less prone to being truant.

Funding of Truancy Prevention Programs in New Mexico

Since FY 05, the New Mexico Legislature has appropriated approximately \$3.0 million, including \$1.0 million for FY 08 to PED for truancy prevention, which PED has used for the Governor's Truancy Prevention Program.¹ In addition, the Legislature has funded a variety of other programs in order to combat the truancy problem illustrated above and improve school attendance, including the *Family and Youth Resource Act* and ENLACE (Engaging Latino Communities for Education).

- The Governor's Truancy Prevention Program was initiated by the Governor in FY 04 and was originally administered by CYFD, and funded in FY 04 with \$1.0 million in Federal Fiscal Relief Funds. The administration of the program and a balance of approximately \$935,000 of the federal funds were transferred to PED in FY 04, and the program has been funded by the Legislature since FY 05. PED reports that it awarded the FY 08 funding for the Truancy/Dropout Prevention Program on a competitive basis to 16 schools/districts throughout the state.² Each site received a \$30,000 grant to improve truancy reporting and

¹ For FY 07 and FY 08, funding for the Truancy Prevention Program was combined with the Dropout Prevention Program. For FY 07, the funding included \$230,000 for the 2nd Judicial District Court for Truancy Court.

² According to PED, the schools/districts receiving truancy/dropout prevention funding for FY 08 are: Alamogordo Public Schools, Albuquerque Public Schools, Aztec Municipal Schools, Belen Consolidated Schools, Bernalillo Public Schools, Deming High School, Gadsden Independent Schools, Grants-Cibola County Schools, Horizon Academy in Albuquerque, Sombrillo Elementary in Española, Southwest Primary Learning Center in Albuquerque, and Taos Charter School.

intervention in the school/district, and three (Gadsden, Roswell, and Taos Charter School) received an additional \$30,000 for a case management pilot.

PED reports that the Truancy Prevention Program was created to determine successful programs for preventing truancy, and is focused on effecting system and agency change that will produce positive outcomes around truancy. Ultimately, desirable program outcomes are to decrease truancy rates, decrease dropout rates, and increase attendance. The program's goals include:

- implementing pilot programs and strategies for the purpose of identifying best practices for truancy prevention that are unique to New Mexico populations and cultures;
 - establishing collaborative partnerships and agreements with New Mexico's communities, including public schools, correction entities, community based organizations, youth advocates, and others for the purpose of implementing effective truancy prevention programs and strategies at the local level; and
 - establishing collaborative partnerships and agreements with New Mexico's Native American tribes and pueblos for the purpose of implementing effective truancy prevention programs and strategies.
- Upon request by LESC staff, PED submitted to the LESC office copies of evaluations of the Truancy Prevention Program. The LESC staff did not have time to evaluate the reports; the executive summary of the 2006-2007 program evaluation is attached (Attachment 5).
 - The *Family and Youth Resource Act* was created as part of the comprehensive school reforms passed by the Legislature in 2003. The act permits the creation of a family and youth resource program in any public school in the state, the purpose of which is to serve as an intermediary to assist public school students and their families to access social and health care services. Among other goals of the *Family and Youth Resource Act* is the elimination of social and health care burdens that may impede a student's ability to attend and succeed in school. Since FY 05, the Legislature has appropriated approximately \$6.2 million to the Family and Youth Resource Fund to finance the operation of the *Family and Youth Resource Act*.
 - The ENLACE program was first implemented in New Mexico in FY 01, and currently operates in five regions and works toward improving the educational outcomes of Hispanic students throughout all stages of their education, beginning with elementary school and continuing throughout college, with emphases on literacy in grades K-4, and dropout prevention in grades 9-10 and the first two years of higher education. Over a four-year period (FY 01 to FY 05), ENLACE received \$4.2 million from the W.K. Kellogg Foundation. Since FY 06 the Legislature has appropriated approximately \$3.24 million to the Higher Education Department (HED) to fund ENLACE, including \$1.44 million for FY 08.

In addition to the funding mentioned above, ENLACE also operates a truancy/dropout prevention program in Mesa Vista Consolidated Schools, Deming Public Schools, and Roswell Independent Schools, funded by PED using \$30,000 in truancy/dropout prevention funds per site.

District Truancy Policies

The programs described above and individual school district and charter school attendance policies both have the goals of improving school attendance and reducing truancy. The *Compulsory School Attendance Law* requires that each school district and charter school maintains an attendance policy that:

- provides for early identification of students with unexcused absences, truants and habitual truants, and provides intervention strategies that focus on keeping truants in an educational setting and prohibit out-of-school suspension and expulsion as the punishment for truancy;
- uses withdrawal as provided in the *Public School Finance Act* only after exhausting efforts to keep students in educational settings; and
- requires that class attendance be taken for every instructional day in every public school or school program in the school district.

In addition, school districts must:

- report truancy and habitual truancy rates to the department in a form and at such times that the department determines; and
- document efforts made to keep truants and habitual truants in educational settings.

However, state law does not require PED to review or approve district truancy/attendance policies, nor does the law require PED to provide guidance in developing a district policy.

During the 2003 interim LESC staff reviewed a sample of local school board attendance policies, and found inconsistencies in the definition of allowable absences, the determination of excessive or unexcused absences, notification procedures, intervention strategies to prevent truancy violations, and disciplinary action.

To investigate whether these inconsistencies still existed in 2007, and to analyze district truancy/attendance policies' adherence to state statute and the Guide to Truancy Referrals, LESC staff analyzed the truancy/attendance policies of two large, two medium, and two small school districts whose dropout rates were relatively high in their respective size categories according to the PED dropout report from school year 2005-2006. The six districts selected were Albuquerque Public Schools, Gallup-McKinley County Public Schools, Española Public Schools, Rio Rancho Public Schools, House Municipal Schools, and Lake Arthur Municipal Schools. PED provided LESC staff with these districts' truancy/attendance policies. PED provided two truancy/attendance policy documents for Gallup-McKinley County Public Schools, which provided different schedules and degrees of truancy intervention. Therefore, Gallup-McKinley County Public Schools will be addressed individually in this report.

The six districts' truancy/attendance policies varied in two key areas: (1) in the way that terms were defined; and (2) in the way that the districts notify parents and take action against students in cases of truancy.

- three of the six district truancy/attendance policies used the terms "truancy" "habitual truancy" and "unexcused absence" as they are defined in law; and
- of the district policies that did not use the statutory definitions one defined truancy differently and the other two did not include a definition of truancy;

- although only one of these three districts' truancy policies included a definition of "unexcused absence," all three of the districts' policies use the term; and
- none of these three district truancy/attendance policies defined "habitual truant."

Perhaps more notable are the differences in the way that the school districts notify parents and/or intervene in cases of truancy. Both the nature of the notifications/interventions and the number of unexcused absences at which they are initiated differ from district to district.

The *Compulsory School Attendance Law* requires that school districts notify the parents of their child's habitual truancy in writing; all district policies sampled require that parents be notified of their child's truancy long before a student accumulates the equivalent of 10 unexcused absences in one year. Key characteristics of the district policies that were sampled include:

- the district policies required initial parental notification at varying numbers of accumulated unexcused absences, ranging from one to five unexcused absences;
- the district policies listed different methods of parental notification and intervention for different numbers of unexcused absences, but in all policies the nature of both parental notification and intervention became more intensive as unexcused absences increased;
- the methods by which parents are notified ranged from automated phone calls to required conferences with the school principal, superintendent, or school board;
- the interventions described in the district policies varied widely, and included meetings with school administrators, creation of an attendance contract, exclusion from extra-curricular activities, in-school suspension, loss of credit for classes, and referral to the Probation Services Office;
- some school districts, after a student accumulates 10 unexcused absences, notify their respective Probation Services Offices after each subsequent unexcused absence to investigate if the student can be considered a neglected child or a child in a family in need of services; and
- two districts explicitly stated in their policies that no out-of-school suspension or expulsion shall be imposed due to truancy.

The analysis of the Gallup-McKinley County Public Schools truancy/attendance policy was difficult to evaluate because PED delivered two conflicting district policy documents. LESC staff attempted to clarify which policy was in use by contacting both PED and the district. The PED Statewide Truancy Coordinator reported that Gallup had provided both documents to the department, and also stated that it was unclear which document represented the district's official policy. A representative from the district's Hearing Authority could not specify which document was in effect, and agreed to investigate the conflicting documents. The two documents differ in that one document prescribes notifications and interventions for students who have acquired five, 10, and 15 absences, whereas the other document prescribes notifications and more severe interventions for the first through fourth truancy offenses. For example, under the first policy a student could acquire five unexcused absences before the student's parents are notified of the absences and under the other policy the student would already be facing a semester-long suspension.

Not only are the conflicting policies confusing, but the second policy appears to work against the provision in the *Compulsory School Attendance Law* requiring that each school district must maintain an attendance policy that provides intervention strategies that focus on keeping truants in an educational setting and prohibit out-of-school suspension and expulsion as the punishment for truancy.

Issue: The Albuquerque Public Schools truancy/attendance policy included one line that appears to be in conflict with state statute. The section of the policy addressing excessive absences includes the following statement:

“State law requires a school to disenroll a student after ten (10) consecutive days of absence.”

This appears to be in conflict with a portion of the *Compulsory School Attendance Law* requiring that school district attendance policies must use withdrawal as provided in the *Public School Finance Act* only after exhausting efforts to keep students in educational settings. In the *Public School Finance Act*, the definition of “membership” states:

“Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; *provided that withdrawals do not include truants and habitual truants the school district is required to intervene with and keep in an educational setting ...*”

HJM 40 / SJM 36 Study Truancy and Delinquency Notices

HJM 40 and SJM 36 requested that CYFD and PED, in consultation with the office of the attorney general and with representatives of public school districts, private schools, district attorneys, law enforcement agencies and other appropriate entities, study truancy and the issues surrounding the timely notification of public and private schools when a student is the subject of a delinquency petition, including:

- a review of actions that school personnel may take upon receipt of a delinquency petition to assist the student and to discourage truancy; and
- a comprehensive review of the intervention and enforcement provisions in both the *Compulsory School Attendance Law* and the *Children's Code* and that CYFD and PED report their findings and recommendations for legislation to reconcile the inconsistencies in provisions in law dealing with truancy to the LESC.

In response to the memorials, in summer 2007, PED contracted with Mr. Bob Cleavall, who established a work group comprised of representatives from PED, CYFD, the office of the Attorney General, the Second Judicial District Court, the New Mexico Sentencing Commission, public school districts, the New Mexico Superintendent's Association, the Coalition for Charter Schools, the New Mexico School Boards Association, and the New Mexico Council on Crime and Delinquency. The work group met three times, starting in August 2007. Two subgroups were formed to review the two tasks requested by the memorials. One task was to study issues of school notification of delinquency proceedings against students, and the other task was to conduct a comprehensive review of the intervention and enforcement provisions in both the *Compulsory School Attendance Law* and the *Children's Code*.

The first task requested by the memorial is based on a bill from the 2007 session that did not pass, and, as amended, would have required PED and CYFD to jointly promulgate rules for the development and implementation of an education and management plan for a child who poses a danger to himself or herself or to the community and who is adjudicated as a delinquent or arrested for a crime that, upon adjudication, may make the child a youthful offender or a serious youthful offender. Based on this bill, the work group drafted a Memorandum of Understanding

(MOU) between CYFD and PED to address the issue of school notification of delinquency proceedings against students, and to outline each agency's responsibilities (Attachment 6). The MOU calls for the creation of an Education Management Plan for children that may pose a danger to themselves or the community, and the work group has drafted guidelines for the development of such a plan (Attachment 7). The work group determined that the MOU should be completed between a local school district and CYFD. PED would be involved to help facilitate the MOU process between each local school district and CYFD.

The subgroup charged with performing the second task requested by the memorial felt that the group required more time to retrieve information before making any recommendations, and recommends instead that the current work group members remain and continue throughout school year 2007-2008 to allow more time for review and discussion.

In addition, the work group recommends that the MOU between PED and CYFD be finalized and distributed to the sponsoring legislators, LESC, the Lieutenant Governor's Office and any other appropriate parties.

Presenter

Mr. Bob Cleavall, Truancy Contractor for PED, will discuss the work performed by the 2007 Truancy Work Group, and will present the MOU and the guidelines drafted by the work group.

Policy Options

Based on the issues presented in this report, and in order to reduce the prevalence of truancy in New Mexico, the committee may wish to consider the following policy options:

- introduce legislation to align the definition of a habitually truant student with the *Compulsory School Attendance Law* by changing the definition of a "child or family in need of family services" in the *Family Services Act* and in the *Family in Need of Court-Ordered Services Act* to read "a family whose child has accumulated the equivalent of 10 or more unexcused absences within a school year."
- to provide consistency in the reporting of school district truancy data and notification/intervention in cases of truancy:
 - require PED to assist school districts in the reporting of unexcused absences, truancy, and habitual truancy based on equivalency, not frequency. *For Example:* Require a district to record two half-day unexcused absences as one unexcused absence, rather than two, as is the current practice.
 - require PED to develop a plan for ensuring the consistency of district truancy policies and for verifying that the truancy/attendance policies of all school districts and charter schools adhere to state statute.

22-12-1

PUBLIC SCHOOLS

22-12-2

~~C. The board shall not be estopped from acting in accordance with applicable statutes because of statements of fact or law made by the board or its employees.~~

~~History: Laws 1998, ch. 38, § 2.~~

ARTICLE 12

Compulsory School Attendance

Sec.

22-12-1. Short title.

22-12-2. Compulsory school attendance; responsibility.

22-12-2. Compulsory school attendance; responsibility. (Effective July 1, 2007.)

22-12-2.1. Interscholastic extracurricular activities; student participation.

22-12-3. Religious instruction excusal.

22-12-3. Religious instruction excusal. (Effective July 1, 2007.)

22-12-4. Right to education.

22-12-5. School attendance.

22-12-6. Certificates of employment.

Sec.

22-12-7. Enforcement of attendance law; habitual truants; penalty.

22-12-7. Enforcement of attendance law; habitual truants; penalty. (Effective July 1, 2007.)

22-12-8. Early identification; unexcused absences and truancy.

22-12-8. Early identification; unexcused absences and truancy. (Effective July 1, 2007.)

22-12-9. Unexcused absences and truancy; attendance policies.

22-12-9. Unexcused absences and truancy; attendance policies. (Effective July 1, 2007.)

22-12-1. Short title.

Chapter 22, Article 12 NMSA 1978 may be cited as the "Compulsory School Attendance Law".

History: 1953 Comp., § 77-10-1, enacted by Laws 1967, ch. 16, § 169; 2003, ch. 153, § 55.

Cross references. — For constitutional provision pertaining to compulsory school attendance, see N.M. Const., art. XII, § 5.

The 2003 amendment, effective April 4, 2003, substituted "Chapter 22, Article 12 NMSA 1978" for "Sec-

tions 22-12-1 through 22-12-7 NMSA 1978" at the beginning of the section.

Law reviews. — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

22-12-2. Compulsory school attendance; responsibility.

A. Any qualified student and any person who because of his age is eligible to become a qualified student as defined by the Public School Finance Act [22-8-1 NMSA 1978] until attaining the age of majority shall attend a public school, a private school, a home school or a state institution. A person shall be excused from this requirement if:

(1) the person is specifically exempted by law from the provisions of this section;

(2) the person has graduated from a high school;

(3) the person is at least seventeen years of age and has been excused by the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the parent, guardian or other person having custody and control consents; or

(4) with consent of the parent of the person to be excused, the person is excused from the provisions of this section by the superintendent of schools of the school district in which the person is a resident and the person is under eight years of age.

B. A person subject to the provisions of the Compulsory School Attendance Law [22-12-1 NMSA 1978] shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident.

C. Any parent of a person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person.

D. Each local school board and each governing authority of a private school shall enforce the provisions of the Compulsory School Attendance Law for students enrolled in their respective schools.

(SEE 2007 SUPPLEMENT ATTACHED)

History: 1953 Comp., § 77-10-2, enacted by Laws 1967, ch. 16, § 170; 1967, ch. 133, § 1; 1972, ch. 17, § 2; 1974, ch. 7, § 2; 1975, ch. 332, § 3; 1975, ch. 338, § 2; 1981, ch. 7, § 1; 1985, ch. 21, § 4; 1997, ch. 194, § 1; 2001, ch. 183, § 1; 2004, ch. 28, § 2.

Cross references. — For excusal of certain students from full-time school attendance, see 22-12-6 NMSA 1978.

For age of majority, see 28-6-1 NMSA 1978.

The 1997 amendment, effective June 20, 1997, deleted former Paragraph A(5) relating to persons with learning disabilities or mental, physical or emotional conditions being excused from compulsory school attendance, and made minor stylistic changes at the end of Paragraphs A(3) and (4).

The 2001 amendment, effective June 15, 2001, substituted "seventeen years" for "sixteen years" in Paragraph A(3).

The 2004 amendment, effective May 19, 2004, deleted from Paragraph (4) of Subsection A and Subsection C, "guardian or person having custody or control" and added new Subsection D.

Duty to protect children. — Compulsory attendance laws in no way restrain a child's liberty so as to render the child and his parents unable to care for the child's basic needs. Thus, the state does not incur under the Due Process Clause an affirmative duty to protect school children who attend state-run schools from deprivations by private actors merely on the basis of compulsory attendance laws. *Maldonado v. Josey*, 975 F.2d 727 (10th Cir. 1992), cert. denied, 507 U.S. 914, 113 S. Ct. 1266, 122 L. Ed. 2d 662 (1993).

Constitutionality of prohibiting home instruction. — The exclusion of home instruction by a parent, guardian or custodian of a child from satisfying the requirements of the compulsory school attendance law does not violate equal protection as guaranteed in the United States and New Mexico constitutions. *State v. Edgington*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983) (decided prior to 1985 amendment, which inserted "a home school" in introductory language of Subsection A).

Legislature did not intend for the law to require a student to attend the public schools of

his district, nor that such a student be required to do so by any rule of any other body. 1973 Op. Att'y Gen. No. 73-59.

Validity of regulations prohibiting school attendance by certain students. — A rule which requires the withdrawal of a student when it is known that she is pregnant and when the school officials do not believe that such attendance is proper, clearly violates the compulsory attendance law, therefore, if the girl is physically capable of attending school, the local school board may not prohibit her attendance by rule or regulation merely because she is pregnant. 1967 Op. Att'y Gen. No. 67-117.

Children under 17 (now 18) years of age may not be excluded or exempted from school because they are married. 1967 Op. Att'y Gen. No. 67-117.

Law reviews. — For comment, "Compulsory School Attendance - Who Directs the Education of a Child?" *State v. Edgington*, see 14 N.M.L. Rev. 453 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 68 Am. Jur. 2d Schools § 253 et seq.

Releasing public school pupils from attendance for purposes of attending religious-education classes, 2 A.L.R.2d 1371.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law, 3 A.L.R.2d 1401.

Marriage or pregnancy of public school student as ground for expulsion, exclusion or restriction of activities, 11 A.L.R.3d 996.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college, 32 A.L.R.3d 864.

What constitutes "private school" within statute making attendance at such a school compliance with compulsory school-attendance law, 65 A.L.R.3d 1222.

Conditions at school as excusing or justifying nonattendance, 9 A.L.R.4th 122.

Validity of regulation of athletic eligibility of students voluntarily transferring from one school to another, 15 A.L.R.4th 885.

79 C.J.S. Schools and School Districts §§ 463 to 474.

(SEE 2007 SUPPLEMENT ATTACHED)

(SEE 2007 SUPPLEMENT ATTACHED)

22-12-2. Compulsory school attendance; responsibility. (Effective July 1, 2007.)

A. Any qualified student and any person who because of the person's age is eligible to become a qualified student as defined by the Public School Finance Act [22-8-1 NMSA 1978] until attaining the age of majority shall attend a public school, a private school, a home school or a state institution. A person shall be excused from this requirement if:

- (1) the person is specifically exempted by law from the provisions of this section;*
- (2) the person has graduated from a high school;*
- (3) the person is at least seventeen years of age and has been excused by the local school board or the governing body of a state-chartered charter school or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the parent consents; or*
- (4) with consent of the parent of the person to be excused, the person is excused from the provisions of this section by the superintendent of schools of the school district or by the head administrator of the state-chartered charter school and the person is under eight years of age.*

B. A person subject to the provisions of the Compulsory School Attendance Law [22-12-1 NMSA 1978] shall attend school for at least the length of time of the school year that is es-

established in the school district in which the person is a resident or the state-chartered charter school in which the person is enrolled.

C. Any parent of a person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person.

D. Each local school board and each governing body of a charter school or private school shall enforce the provisions of the Compulsory School Attendance Law for students enrolled in their respective schools.

History: 1953 Comp., § 77-10-2, enacted by Laws 1967, ch. 16, § 170; 1967, ch. 133, § 1; 1972, ch. 17, § 2; 1974, ch. 7, § 2; 1975, ch. 332, § 3; 1975, ch. 338, § 2; 1981, ch. 7, § 1; 1985, ch. 21, § 4; 1997, ch. 194, § 1; 2001, ch. 183, § 1; 2004, ch. 28, § 2; 2006, ch. 94, § 41.

The 2006 amendment, effective July 1, 2007, in Paragraph (3) of Subsection A, adds the governing body of a state-chartered charter school and deletes the

reference to guardian or other person having custody and control; in Paragraph (4) of Subsection A, adds the head administrator of the state-chartered charter school; in Subsection B, adds the state-chartered charter school in which the person is enrolled; and in Subsection D, adds the governing body of a charter school.

22-12-2.1. Interscholastic extracurricular activities; student participation.

A. A student shall have a 2.0 grade point average on a 4.0 scale, or its equivalent, either cumulatively or for the grading period immediately preceding participation, in order to be eligible to participate in any interscholastic extracurricular activity. For purposes of this section, "grading period" is a period of time not less than six weeks. The provisions of this subsection shall not apply to special education students placed in class C and class D programs.

B. No student shall be absent from school for school-sponsored interscholastic extracurricular activities in excess of fifteen days per semester, and no class may be missed in excess of fifteen times per semester.

C. The provisions of Subsections A and B of this section apply only to interscholastic extracurricular activities.

D. The state superintendent [secretary] may issue a waiver relating to the number of absences for participation in any state or national competition. The state superintendent shall develop a procedure for petitioning cumulative provision eligibility cases, similar to other eligibility situations.

E. Student standards for participation in interscholastic extracurricular activities shall be applied beginning with a student's academic record in grade nine.

History: 1978 Comp., § 22-12-2.1, enacted by Laws 1986, ch. 33, § 27; 1987, ch. 305, § 1; 1988, ch. 20, § 1; 1993, ch. 27, § 1; 1997, ch. 239, § 1; 1997, ch. 245, § 1.

Cross references. — For the transfer of powers and duties of the former state superintendent, see 9-24-15 NMSA 1978.

The 1988 amendment, effective May 18, 1988, deleted former Subsections C and D, regarding absences in the 1989-90 and 1990-91 school years, and redesignated former Subsections E to G as present Subsections C to E, substituting "Subsections A and B" for "Subsections A through D" in present Subsection C.

The 1993 amendment, effective June 18, 1993, deleted "Effective with the 1986-87 school year," at

the beginning of Subsections A and B and substituted "fifteen days" and "fifteen times" for "ten days" and "ten times" in Subsection B.

1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 239, § 1 and Laws 1997, ch. 245, § 1, effective June 20, 1997, inserted "interscholastic" at the beginning of the section heading and throughout the section, in Subsection C, substituted "only to interscholastic" for "to all", and in Subsection E, substituted "academic record in grade nine" for "second semester of grade eight" at the end. This section is set out as amended by Laws 1997, ch. 245, § 1. See 12-1-8 NMSA 1978.

22-12-3. Religious instruction excusal.

A student may, subject to the approval of the school principal, be excused from school to participate in religious instruction for not more than one class period each school day with the written consent of his parents at a time period not in conflict with the academic program

of the school. The local school board and its school employees shall not assume responsibility for the religious instruction or permit it to be conducted on school property.

History: 1953 Comp., § 77-10-2.1, enacted by Laws 1971, ch. 238, § 1; 1997, ch. 258, § 1; 2003, ch. 153, § 56.

Cross references. — For constitutional right to freedom of religion, see N.M. Const., art. II, § 11.

For prohibition against requiring attendance at or participation in religious services by teachers or students, see N.M. Const., art. XII, § 9.

The 1997 amendment, effective July 1, 1997, substituted "class period" for "hour" in the first sentence

and substituted "religious instruction or permit it" for "religious instructions or permit them" in the second sentence.

The 2003 amendment, effective April 4, 2003, deleted "local" following "approval of the " near the beginning of the section; substituted "principal" for "board" following "school" near the beginning of the section; and inserted "school" preceding "employees shall not" near the end of the section.

22-12-3. Religious instruction excusal. (Effective July 1, 2007.)

A student may, subject to the approval of the school principal, be excused from school to participate in religious instruction for not more than one class period each school day with the written consent of the student's parents at a time period not in conflict with the academic program of the school. The local school board or governing body of a charter school, and its school employees, shall not assume responsibility for the religious instruction or permit it to be conducted on school property.

History: 1953 Comp., § 77-10-2.1, enacted by Laws 1971, ch. 238, § 1; 1997, ch. 258, § 1; 2003, ch. 153, § 56; 2006, ch. 94, § 42.

The 2006 amendment, effective July 1, 2007, adds the governing body of a charter school.

22-12-4. Right to education.

All school age persons in the state shall have a right to a free public education as follows:

A. except for school age persons who are detained or enrolled in state institutions other than those school age persons provided for in Subsection C of this section, any school age person shall have a right to attend public school within the school district in which he resides or is present;

B. except as provided in Subsection C of this section, the state institution in which a school age person is detained or enrolled shall be responsible for providing educational services for the school age person; and

C. any school age person who is a client as defined in Section 43-1-3 NMSA 1978 in a state institution under the authority of the secretary of the health and environment department shall have a right to attend public school in the school district in which the institution, in which he is a client, is located if:

(1) the school age person has been recommended for placement in a public school by the educational appraisal and review committee of the district in which the institution is located; or

(2) the school age person has been recommended for placement in a public school as a result of the appeal process as provided in the special education regulations of the state board [department] of education.

History: 1953 Comp., § 77-10-3, enacted by Laws 1967, ch. 16, § 171; reenacted by 1978, ch. 211, § 10.

Compiler's notes. — Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

No contractual right to free public education. — The right and privilege to a free public education does not give rise to a contractual relationship for which an individual may sue for breach of contract. Rubio ex rel. Rubio v. Carlsbad Mun. School Dist., 106 N.M. 446, 744 P.2d 919 (Ct. App. 1987).

School board may allocate attendance within district. — So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Atty Gen. No. 79-36.

Students may not be forced to attend particular public school, although enrollment in another

school within or without the local district is subject to availability of accommodations and must be determined by the local board. 1979 Op. Att'y Gen. No. 79-36.

Am. Jur. 2d, A.L.R. and C.J.S. references. — AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

22-12-5. School attendance.

A. Local school boards may admit school-age persons who do not live within the school district to the public schools within the school district when there are sufficient school accommodations to provide for them.

B. Local school boards may permit school-age persons to transfer to a school outside the child's attendance zone but within the school district when there are sufficient school accommodations to provide for them.

C. Local school boards may charge a tuition fee for the right to attend public school within the school district only to those school-age persons who do not live within the state. The tuition fee shall not exceed the amount generated by the public school fund for a school-age person similarly situated within the school district for the current school year.

D. When the parent or guardian of a student not living in the state pays an ad valorem property tax for school purposes within the district, the amount of the tuition payable for the school year shall be reduced by the district average ad valorem tax per pupil as determined by the ad valorem tax credit utilized in calculating state equalization guarantee distribution.

History: 1953 Comp., § 77-10-4, enacted by Laws 1967, ch. 16, § 172; 1979, ch. 55, § 1; 1990 (1st S.S.), ch. 9, § 11.

The 1990 (1st S.S.) amendment, effective June 18, 1990, substituted "the school district" for "their school district" in Subsection A, added present Subsection B, redesignated former Subsections B and C as present Subsections C and D, adding "distribution" at the end of Subsection D.

Child who lives in state is state resident. — For the purpose of public school education, a child is considered a resident of the state if he lives in the state. 1978 Op. Att'y Gen. No. 78-14 (rendered under former law).

Students may not be forced to attend particular public school, although enrollment in another school within or without the local district is subject

to availability of accommodations and must be determined by the local board. 1979 Op. Att'y Gen. No. 79-36.

Tuition assessment is mandatory although Subsection B uses the word "may." 1978 Op. Att'y Gen. No. 78-14 (rendered under former law).

Law reviews. — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college, 83 A.L.R.2d 497, 56 A.L.R.3d 641.

79 C.J.S. Schools and School Districts §§ 455 to 462.

22-12-6. Certificates of employment.

A. Any student subject to the provisions of the Compulsory School Attendance Law [22-12-1 NMSA 1978] attaining the age of fourteen may be excused from full-time school attendance by issuance of a certificate of employment by the superintendent of schools of the school district in which the student is a resident or is employed. The certificate of employment shall only be issued upon satisfactory assurance to the superintendent of schools that the student will be definitely employed in a gainful trade or occupation.

B. The certificate of employment shall contain the following information:

- (1) the name, age and residence of the person excused from full-time school attendance;
- (2) by whom the person is to be employed or is employed;
- (3) the last class grade attended by the person; and
- (4) a statement that the person is excused from full-time school attendance until the certificate is revoked.

History: 1953 Comp., § 77-10-6, enacted by Laws 1967, ch. 16, § 174.

Cross references. — For excusal of persons from school attendance requirement generally, see 22-12-2 NMSA 1978.

Law reviews. — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

(SEE 2007 SUPPLEMENT ATTACHED)

22-12-7. Enforcement of attendance law; habitual truants; penalty.

A. Each local school board and each governing authority of a private school shall initiate the enforcement of the provisions of the Compulsory School Attendance Law [22-12-1 NMSA 1978] for students enrolled in their respective schools.

B. To initiate enforcement of the provisions of the Compulsory School Attendance Law against an habitual truant, a local school board or governing authority of a private school or its authorized representatives shall give written notice of the habitual truancy by certified mail to or by personal service on the parent of the student subject to and in noncompliance with the provisions of the Compulsory School Attendance Law.

C. If unexcused absences continue after written notice of habitual truancy as provided in Subsection B of this section has occurred, the student shall be reported to the probation services office of the judicial district where the student resides for an investigation as to whether the student shall be considered to be a neglected child or a child in a family in need of services because of habitual truancy and thus subject to the provisions of the Children's Code [32A-1-1 NMSA 1978]. In addition to any other disposition, the children's court may order the habitual truant's driving privileges to be suspended for a specified time not to exceed ninety days on the first finding of habitual truancy and not to exceed one year for a subsequent finding of habitual truancy.

D. If, after review by the juvenile probation office where the student resides, a determination and finding is made that the habitual truancy by the student may have been caused by the parent of the student, then the matter will be referred by the juvenile probation office to the district attorney's office or any law enforcement agency having jurisdiction for appropriate investigation and filing of charges allowed under the Compulsory School Attendance Law. Charges against the parent may be filed in metropolitan court, magistrate court or district court.

E. A parent of the student who, after receiving written notice as provided in Subsection B of this section and after the matter has been reviewed in accordance with Subsection D of this section, knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor. Upon the first conviction, a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100) may be imposed, or the parent of the student may be ordered to perform community service. If violations of the Compulsory School Attendance Law continue, upon the second and subsequent convictions, the parent of the student who knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500) or imprisonment for a definite term not to exceed six months or both.

F. The provisions of this section shall apply beginning July 1, 2004.

History: 1953 Comp., § 77-10-7, enacted by Laws 1967, ch. 16, § 175; 1975, ch. 332, § 4; 1981, ch. 7, § 2; 1986, ch. 33, § 28; 1987, ch. 222, § 1; 2004, ch. 28, § 3.

The 2004 amendment, which becomes applicable July 1, 2004, added "against habitual truant" and "habitual truancy" throughout the section, deleted "guardian or custodian" and "guardian or one having custody" throughout the section, deleted from Subsection D, "the children's court division or by the district judge of the children's court division", and added the last sentence permitting charges against a parent to be filed in magistrate, metropolitan or district court and amended Subsection F to change the applicability of the section from July 1, 1987 to July 1, 2004.

Constitutionality of prohibiting home instruction. — The exclusion of home instruction by a parent,

guardian or custodian of a child from satisfying the requirements of the compulsory school attendance law does not violate equal protection as guaranteed in the United States and New Mexico constitutions. *State v. Edgington*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983) (decided prior to 1985 amendment to 22-12-2 NMSA 1978, which inserted "a home school" in the introductory language of Subsection A).

Law reviews. — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? *State v. Edgington*," see 14 N.M.L. Rev. 453 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Conditions at school as excusing or justifying nonattendance, 9 A.L.R.4th 122.

**22-12-7. Enforcement of attendance law; habitual truants; penalty.
(Effective July 1, 2007.)**

A. Each local school board and each governing body of a charter school or private school shall initiate the enforcement of the provisions of the Compulsory School Attendance Law [22-12-1 NMSA 1978] for students enrolled in their respective schools.

B. To initiate enforcement of the provisions of the Compulsory School Attendance Law against an habitual truant, a local school board or governing body of a charter school or private school or its authorized representatives shall give written notice of the habitual truancy by certified mail to or by personal service on the parent of the student subject to and in non-compliance with the provisions of the Compulsory School Attendance Law.

C. If unexcused absences continue after written notice of habitual truancy as provided in Subsection B of this section has occurred, the student shall be reported to the probation services office of the judicial district where the student resides for an investigation as to whether the student shall be considered to be a neglected child or a child in a family in need of services because of habitual truancy and thus subject to the provisions of the Children's Code [32A-1-1 NMSA 1978]. In addition to any other disposition, the children's court may order the habitual truant's driving privileges to be suspended for a specified time not to exceed ninety days on the first finding of habitual truancy and not to exceed one year for a subsequent finding of habitual truancy.

D. If, after review by the juvenile probation office where the student resides, a determination and finding is made that the habitual truancy by the student may have been caused by the parent of the student, then the matter will be referred by the juvenile probation office to the district attorney's office or any law enforcement agency having jurisdiction for appropriate investigation and filing of charges allowed under the Compulsory School Attendance Law. Charges against the parent may be filed in metropolitan court, magistrate court or district court.

E. A parent of the student who, after receiving written notice as provided in Subsection B of this section and after the matter has been reviewed in accordance with Subsection D of this section, knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor. Upon the first conviction, a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100) may be imposed, or the parent of the student may be ordered to perform community service. If violations of the Compulsory School Attendance Law continue, upon the second and subsequent convictions, the parent of the student who knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500) or imprisonment for a definite term not to exceed six months or both.

F. The provisions of this section shall apply beginning July 1, 2004.

History: 1953 Comp., § 77-10-7, enacted by Laws 1967, ch. 16, § 175; 1975, ch. 332, § 4; 1981, ch. 7, § 2; 1986, ch. 33, § 28; 1987, ch. 222, § 1; 2004, ch. 28, § 3; 2006, ch. 94, § 43.

The 2006 amendment, effective July 1, 2007, in Subsections A and B, adds the governing body of a charter school.

22-12-8. Early identification; unexcused absences and truancy.

Notwithstanding the provisions of Section 22-12-7 NMSA 1978, if a student is truant, the school district shall contact the student's parent to inform the parent that the student is truant and to discuss possible interventions. The provisions of this section do not apply to any absence if the parent has contacted the school to explain the absence.

History: 1978 Comp., § 22-12-8, enacted by Laws 1985, ch. 104, § 1; 2004, ch. 28, § 4.

The 2004 amendment, effective May 19, 2004, amended this section to require the school district to

contact a parent that a student is truant and discuss possible interventions and deleted "legal guardian or custodian".

22-12-8. Early identification; unexcused absences and truancy. (Effective July 1, 2007.)

Notwithstanding the provisions of Section 22-12-7 NMSA 1978, if a student is truant, the school district or charter school shall contact the student's parent to inform the parent that the student is truant and to discuss possible interventions. The provisions of this section do not apply to any absence if the parent has contacted the school to explain the absence.

History: 1978 Comp., § 22-12-8, enacted by Laws 1985, ch. 104, § 1; 2004, ch. 28, § 4; 2006, ch. 94, § 44.

The 2006 amendment, effective July 1, 2007, adds charter schools.

22-12-9. Unexcused absences and truancy; attendance policies.

A. As used in this section and Sections 22-12-7 and 22-12-8 NMSA 1978:

(1) "habitual truant" means a student who has accumulated the equivalent of ten or more unexcused absences within a school year;

(2) "truant" means a student who has accumulated five unexcused absences within any twenty-day period; and

(3) "unexcused absence" means an absence from school or a class for which the student does not have an allowable excuse pursuant to the Compulsory School Attendance Law [22-12-1 NMSA 1978] or rules of the local school board or governing authority of a private school.

B. Each school district shall maintain an attendance policy that:

(1) provides for early identification of students with unexcused absences, truants and habitual truants and provides intervention strategies that focus on keeping truants in an educational setting and prohibit out-of-school suspension and expulsion as the punishment for truancy;

(2) uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting efforts to keep students in educational settings; and

(3) requires that class attendance be taken for every instructional day in every public school or school program in the school district.

C. School districts shall report truancy and habitual truancy rates to the department in a form and at such times as the department determines and shall document efforts made to keep truants and habitual truants in educational settings.

History: Laws 2004, ch. 28, § 1; 2005, ch. 260, § 2.

The 2005 amendment, effective June 17, 2005, adds Subsection B(2) to provide that each school district shall maintain an attendance policy that uses withdrawal as provided in Section 22-8-2 NMSA 1978

only after exhausting efforts to keep students in educational settings and provides in Subsection D that school districts shall document efforts made to keep truants and habitual truants in educational settings.

22-12-9. Unexcused absences and truancy; attendance policies. (Effective July 1, 2007.)

A. As used in this section and Sections 22-12-7 and 22-12-8 NMSA 1978:

(1) "habitual truant" means a student who has accumulated the equivalent of ten or more unexcused absences within a school year;

(2) "truant" means a student who has accumulated five unexcused absences within any twenty-day period; and

(3) "unexcused absence" means an absence from school or a class for which the student does not have an allowable excuse pursuant to the Compulsory School Attendance Law [22-12-1 NMSA 1978] or rules of the local school board or governing authority of a charter school or private school.

B. Each school district and charter school shall maintain an attendance policy that:

(1) provides for early identification of students with unexcused absences, truants and habitual truants and provides intervention strategies that focus on keeping truants in an educational setting and prohibit out-of-school suspension and expulsion as the punishment for truancy;

(2) uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting efforts to keep students in educational settings; and

(3) requires that class attendance be taken for every instructional day in every public school or school program in the school district.

C. School districts and charter schools shall report truancy and habitual truancy rates to the department in a form and at such times as the department determines and shall document efforts made to keep truants and habitual truants in educational settings. Locally chartered charter schools shall provide copies of their reports to the school district.

History: Laws 2004, ch. 28, § 1; 2005, ch. 260, § 2; 2006, ch. 94, § 45.

The 2006 amendment, effective July 1, 2007, adds charter schools in Paragraph (3) of Subsection A and in

Subsections B and C and provides in Subsection C that locally chartered charter schools shall provide copies of reports to the school district.

ARTICLE 13

Courses of Instruction and School Programs

Sec.

22-13-1. Subject areas; minimum instructional areas required; accreditation.

22-13-1.1. Graduation requirements.

22-13-1.2. High school curricula and end-of-course tests; alignment.

22-13-1.3. Reading initiative; design.

22-13-1.4. Honors or similar classes in mathematics and language arts.

22-13-1.5. Core curriculum framework; purpose; curriculum.

22-13-2. Repealed.

22-13-3. Early childhood education programs required.

22-13-3.1. Even start family literacy program; created; guidelines; benchmarks, performance standards and evaluations.

22-13-3.2. Full-day kindergarten programs.

22-13-3.3. Short title.

22-13-3.4. Purpose.

22-13-3.5. Definitions.

22-13-3.6. Literacy for children at risk fund created; administration of fund.

22-13-3.7. Disbursement of funds; approved projects.

22-13-3.7. Disbursement of funds; approved projects. (Effective July 1, 2007.)

22-13-4. Repealed.

22-13-5. Special education.

22-13-6. Special education; definitions.

Sec.

22-13-6.1. Gifted children; determination.

22-13-7. Special education; responsibility.

22-13-8. Special education; private

22-13-9. Part-time schools.

22-13-10. Part-time schools; restriction on employment of students; penalty.

22-13-11. Repealed.

22-13-12. Approved driver-education courses.

22-13-13. School lunch program.

22-13-13.1. Temporary provision; food and beverages sold outside of school meal programs.

22-13-14. Emergency drills; requirement.

22-13-15. Public school instruction; prohibition;

22-13-16. Private school programs; solicitations; permit; penalty.

22-13-17. Repealed.

22-13-18. Repealed.

22-13-19. Repealed.

22-13-20. Repealed.

22-13-21. Repealed.

22-13-22. Repealed.

22-13-23. Repealed.

22-13-24. Repealed.

22-13-25. Academic competitions.

22-13-26. Youth programs established.

22-13-27. Distance learning and computer-based courses.

22-13-1. Subject areas; minimum instructional areas required; accreditation.

A. The department shall require public schools to address department-approved academic content and performance standards when instructing in specific department-required subject areas as provided in this section. A public school or school district failing to meet these minimum requirements shall not be accredited by the department.

B. All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension, and in mathematics. Students in kindergarten and first grades shall be screened and monitored

~~revenues and expenditures, including staff salaries and benefits and the operational cost per credit hour.~~

~~F. The annual teacher education accountability report shall be adopted by each public post-secondary educational institution, reported in accordance with guidelines established by the department to ensure effective communication with the public and disseminated to the governor, legislators and other policymakers and business and economic development organizations by November 1 of each year.~~

~~History: Laws 2007, ch. 264, § 2.~~

~~Effective dates. — Laws 2007, ch. 264 contains no effective date provision, but, pursuant to N.M. Const.,~~

~~art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.~~

22-10A-27. Discharge hearing; procedures.

I. GENERAL CONSIDERATION.

~~Reduction in force as just cause. — Statutory just cause" allows for discharge of a teacher when exigent fiscal circumstances justify a reduction in force, but the teacher's competence, turpitude and performance do not. Aguilera v. Hatch Valley Schools, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.~~

~~Standard for reduction in force discharge. — When a school board is forced to reduce its teaching staff by way of a reduction in force, it must prove that there is no other position for which the teacher, who is to be discharged, is qualified consistent with the academic necessities of the district. Aguilera v. Hatch Valley Schools, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.~~

~~Justification for discharge for reduction in force. — Unlike termination, which applies to the coming year, discharge results in a teacher losing his or her job in the middle of the school year when there may be no opportunity to find other employment. Given the extreme hardship to the teacher, the justifications must be substantial to allow a school board to layoff a qualified teacher in the middle of a school year pursuant to a reduction in force. The school board has to show not just projected financial burdens in the future, but that it cannot survive financially in the present year, which is already underway. Aguilera v. Bd. of Education of the Hatch Valley Schools, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.~~

ARTICLE 12

Compulsory School Attendance

Sec.

22-12-2. Compulsory school attendance; responsibility.

Sec.

22-12-6. Repealed.

22-12-2. Compulsory school attendance; responsibility.

A. Except as otherwise provided, a school-age person shall attend public school, private school, home school or a state institution until the school-age person is at least eighteen years of age unless that person has graduated from high school or received a general educational development certificate. A parent may give written, signed permission for the school-age person to leave school in case of hardship approved by the local superintendent.

B. A school-age person subject to the provisions of the Compulsory School Attendance Law [22-12-1 NMSA 1978] shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident or the state-chartered charter school in which the person is enrolled and the school district or state-chartered charter school shall not excuse a student from attending school except as provided in that law or for parent-authorized medical reasons.

C. Any parent of a school-age person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person.

D. Each local school board and each governing body of a charter school or private school shall enforce the provisions of the Compulsory School Attendance Law for students enrolled in their respective schools.

History: 1953 Comp., § 77-10-2, enacted by Laws 1967, ch. 16, § 170; 1967, ch. 133, § 1; 1972, ch. 17, § 2; 1974, ch. 7, § 2; 1975, ch. 332, § 3; 1975, ch. 338, § 2; 1981, ch. 7, § 1; 1985, ch. 21, § 4; 1997,

ch. 194, § 1; 2001, ch. 183, § 1; 2004, ch. 28, § 2; 2007, ch. 307, § 6; 2007, ch. 308, § 6.

2007 amendments. — Laws 2007, ch. 307, § 6 and Laws 2007, ch. 308, § 6 enacted identical amendments

to this section, effective July 1, 2007. The 2007 amendments delete former Subsection A and adds a new Subsection A, and amend Subsection B to provide that a school district and a state-chartered school district

shall not excuse a student from attending school except as provided by law or for parent-authorized medical reasons.

22-12-6. Repealed.

Repeals. — Laws 2007, ch. 307, § 11 and Laws 2007, ch. 308, § 11 repeal 22-12-6 NMSA 1978, being Laws 1967, ch. 16, § 174, relating to certificates of

employment, effective July 1, 2007. For provisions of former section, see the 2006 NMSA 1978 on New Mexico One Source of Law DVD.

ARTICLE 13

Courses of Instruction and School Programs

Sec.

- 22-13-1. Subject areas; minimum instructional areas required; accreditation.
 22-13-1.1. Graduation requirements.
 22-13-1.4. Honors or similar classes in mathematics and language arts; dual credit courses; languages other than English.
 22-13-1.6. Uniform grade and subject curricula; professional department.
 22-13-1.7. Elementary physical education.

Sec.

- 22-13-9. Repealed.
 22-13-10. Repealed.
 22-13-27. Recompiled.
 22-13-28. K-3 plus; pilot project; eligibility; application; reporting and evaluation.
 22-13-29. Middle and high school literacy initiative.
 22-13-30. Vision screening. (Effective January 1, 2008.)

22-13-1. Subject areas; minimum instructional areas required; accreditation.

A. The department shall require public schools to address department-approved academic content and performance standards when instructing in specific department-required subject areas as provided in this section. A public school or school district failing to meet these minimum requirements shall not be accredited by the department.

B. All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension, and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills and students in second grade shall take diagnostic tests on reading and language arts skills.

C. All first, second and third grade classes shall provide instruction in art, music and a language other than English, and instruction that meets content and performance standards shall be provided in science, social studies, physical education and health education.

D. In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

- (1) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;
- (2) mathematics;
- (3) language other than English;
- (4) communication skills;
- (5) science;
- (6) art;
- (7) music;
- (8) social studies;
- (9) New Mexico history;
- (10) United States history;
- (11) geography;
- (12) physical education; and
- (13) health education.

E. Beginning with the 2008-2009 school year, in eighth grade, algebra 1 shall be offered in regular classroom settings or through on-line courses or agreements with high schools.

32A-3-1

FAMILIES IN NEED OF SERVICES

32A-3-1

of Section 30-7-2.1 NMSA 1978, the administrator or employee shall immediately report the child's actions to a law enforcement agency and the children, youth and families department.

B. Upon receipt of a report pursuant to Subsection A of this section, the law enforcement agency may conduct an investigation to determine if there is probable cause to believe that the child possessed a firearm on school premises.

C. If the law enforcement agency determines there is probable cause to believe that the child possessed a firearm on school premises, the law enforcement agency may take the child into custody and deliver the child to a detention facility licensed by the department. After the child is delivered to a detention facility, the department shall comply with the notification provisions set forth in Subsection C of Section 32A-2-10 NMSA 1978. The child shall be detained in the detention facility, pending a detention hearing pursuant to the provisions of Section 32A-2-13 NMSA 1978.

D. As used in this section, "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. "Firearm" includes any handgun, rifle or shotgun.

History: Laws 1999, ch. 216, § 1; 2003, ch. 225, § 16.

The 2003 amendment, effective July 1, 2003, deleted "the federal Gun-Free Schools Act of 1994 or" following "in violation of" in Subsection A; substituted

"may" for "shall immediately" following "law enforcement agency" in Subsections B and C; and added "As used in this section" at the beginning of Subsection D.

Effective dates. — Laws 1999, ch. 216, § 2, makes the act effective on July 1, 1999.

ARTICLE 3

Family in Need of Services Act

Sec.

32A-3-1. Repealed.

Compiler's notes. — Section 32A-3-1 NMSA 1978 was originally enacted as 32-3-1 NMSA 1978 by Laws 1993, ch. 77, § 62, but were recompiled to Chapter 32A NMSA 1978, in order to retain a historical link be-

tween the pre-July 1, 1993 law and the judicial precedents decided under that law. Citations to decisions under prior law have been included whenever possible.

32A-3-1. Repealed.

Repeals. Laws 2005, ch. 189, § 77 repeals 32A-3-1 NMSA 1978, the short title of the Family in Need of Services Act, effective June 17, 2005.

ARTICLE 3A

Families in Need of Services

Sec.

32A-3A-1. Short title; purpose.

32A-3A-2. Definitions.

32A-3A-3. Request for family services; withdrawal of request; presumption of good faith.

32A-3A-4. Referral process.

32A-3A-5. Repealed.

Sec.

32A-3A-6. Voluntary placement of child outside home; documentation.

32A-3A-7. Voluntary placement; time limitation.

32A-3A-8. Duty to file a petition.

32A-3A-9. Right to regain custody.

32A-3A-10. Voluntary placement; rights of parent.

Compiler's notes. — Sections 32A-3A-1 to 32A-3A-10 NMSA 1978 were originally enacted as 32-3A-1 to 32-3A-10 NMSA 1978 by Laws 1993, ch. 77, §§ 63 to 72, and were subsequently recompiled to this location

in 1993 in order to retain a historical link between the pre-July 1, 1993 law and the judicial precedents decided under that law.

32A-3A-1. Short title; purpose.

- A. Chapter 32A, Article 3A NMSA 1978 may be cited as the "Family Services Act".
- B. The Family Services Act shall be interpreted and construed to effectuate the following expressed legislative purposes:
- (1) to recognize that many instances of a child's behavior are symptomatic of a family in need of family services; and
 - (2) to provide prevention, diversion and intervention services for a child or family.

History: 1978 Comp., § 32A-3A-1, enacted by Laws 1993, ch. 77, § 63; 2005, ch. 189, § 25.

The 2005 amendment, effective June 17, 2005, states the title of the act in Subsection A and provides in Subsection B that the purpose of the Family

Services Act is to recognize that a child's behavior is symptomatic of a need for family services, to provide prevention, diversion and intervention services

32A-3A-2. Definitions.

As used in the Family Services Act:

- A. "child or family in need of family services" means:
- (1) a family whose child's behavior endangers the child's health, safety, education or well-being;
 - (2) a family whose child is absent from the child's place of residence for twenty-four hours or more without the consent of the parent, guardian or custodian;
 - (3) a family in which the parent, guardian or custodian of a child refuses to permit the child to live with the parent, guardian or custodian; or
 - (4) a family in which the child refuses to live with his parent, guardian or custodian; and
- B. "family services" means services that address specific needs of the child or family.

History: 1978 Comp., § 32A-3A-2, enacted by Laws 1993, ch. 77, § 64; 2005, ch. 189, § 26.

The 2005 amendment, effective June 17, 2005, defined "child or family in need of family services" in Subsection A(1) to mean a family whose child's behavior endangers the child's health, safety, education or well-being; deletes former Subsection B which defined "family needs assessment"; defines "family services"

in Subsection B to mean services that address needs of the child or family; deletes the former Subsection C(1) through (10) which listed service that were included in the former definition of "family services" and deletes former Subsection D which defined "plan for family services" as an intervention plan based on the needs of the child and family.

32A-3A-3. Request for family services; withdrawal of request; presumption of good faith.

- A. Any child or family member who has a reasonable belief that the child or family is in need of family services may request family services from the department.
- B. Any person who has a reasonable belief that a child or family is in need of family services may submit a referral to the department.
- C. A family that requests or accepts family services may withdraw its request for or acceptance of family services at any time.
- D. A person who refers a child or family for family services is presumed to be acting in good faith and shall be immune from civil or criminal liability, unless the person acted in bad faith or with malicious purpose.

History: 1978 Comp., § 32A-3A-3, enacted by Laws 1993, ch. 77, § 65; 2005, ch. 189, § 27.

The 2005 amendment, effective June 17, 2005, provides in Subsection A that any child or family member who believes that a child is in need of family services may request family services from the department; provides in Subsection B that any person who

believes that a child is in need of family services may submit a referral to the department; deletes former Subsection C which authorized a representative of a school to submit a request for family services on behalf of a family to the department under listed certain circumstances.

32A-3A-4. Referral process.

A. The department shall, subject to the availability of resources, design and implement a referral process to assist a child or family in accessing appropriate services.

B. When the child involved in the referral process is an Indian child, the assessment and referral process shall include contact with the Indian child's tribe for the purpose of consulting and exchanging information.

History: 1978 Comp., § 32A-3A-4, enacted by Laws 1993, ch. 77, § 66; 1995, ch. 206, § 18; 2005, ch. 189, § 28.

The 1995 amendment, effective July 1, 1995, added "the department, the state department of public education [public education department], the local education agency and the department of health" following "child's family" in Subsection C.

The 2005 amendment, effective June 17, 2005, deletes the requirement in Subsection A that the state

department of public education [public education department] and the department of health cooperate to design and implement an assessment and referral process for the purpose of assessing the needs of a family in need of services and making referrals; deletes former Subsections B and C, which provided for the elements of the assessment and referral process; and redesignated former Subsection D as Subsection B.

32A-3A-5. Repealed.

Repeals. Laws 2005, Chapter 189, § 77 repeals 32A-3A-5 NMSA 1978, relating to plan for family services, effective June 17, 2005. Because the former and new sections are substantially the same, the new sec-

tion is considered a continuation of the former section. See 12-2A-14 NMSA 1978. For provisions of former section, see New Mexico One Source of Law DVD.

32A-3A-6. Voluntary placement of child outside home; documentation.

A. Upon written application by a parent, guardian or custodian, and if good cause is shown, the department may accept custody of a minor child for temporary voluntary placement outside the home.

B. Prior to accepting any child for voluntary placement, the department shall document the following:

- (1) the efforts made by the department to provide or arrange for services by other public or private agencies that would be affordable to the family and that would alleviate the conditions leading to the placement request;
- (2) any determination that the services are not available;
- (3) any refusal by the parent, guardian or custodian to accept the services; and
- (4) the fact that conditions leading to the placement request could not be alleviated by services aimed at keeping the child in the home.

C. If the department accepts custody of a child, the department shall provide the child with shelter in an appropriate facility, pursuant to the provisions of Section 32-3B-6 [32A-3B-6] NMSA 1978, that is located as close as possible to the child's residence. The child shall not be held in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal offenses or a facility for the detention of children alleged to be or adjudicated as delinquent children.

History: 1978 Comp., § 32A-3A-6, enacted by Laws 1993, ch. 77, § 68.

32A-3A-7. Voluntary placement; time limitation.

A. No child shall remain in voluntary placement for longer than one hundred eighty consecutive days or for more than one hundred eighty days in any calendar year; provided that a child may remain in voluntary placement up to an additional one hundred eighty consecutive days upon order of the court after the filing of a petition by the department for extension of voluntary placement, a hearing and a finding that additional voluntary placement is in the best interests of the child.

B. In no event shall a child remain in voluntary placement for a period in excess of three hundred sixty-five days in any two-year period.

C. Any placement described in this section shall not be considered abandonment by a parent, guardian or custodian or other family member.

History: 1978 Comp., § 32A-3A-7, enacted by Laws 1993, ch. 77, § 69; 2005, ch. 82, § 1.

The 2005 amendment, effective April 4, 2005, extends the time for temporary placements of children.

32A-3A-8. Duty to file a petition.

If any child has remained in voluntary placement for longer than three hundred sixty-five days in any two-year period and the parent, guardian or custodian of the child refuses to or cannot accept the child back into the parent's, guardian's or custodian's custody, the department shall immediately file a petition alleging that the child is a neglected child or that the child's family needs court-ordered family services.

History: 1978 Comp., § 32A-3A-8, enacted by Laws 1993, ch. 77, § 70; 2005, ch. 82, § 2.

The 2005 amendment, effective April 4, 2005, extends the time of placement after which the department is required to file a petition.

32A-3A-9. Right to regain custody.

A parent, guardian or custodian may at any time demand and obtain the return of a child voluntarily placed outside the home. The child shall be returned within seventy-two hours of the demand; however, the department may prevent the immediate return by requesting the children's court attorney to file a petition alleging neglect or abuse and by obtaining temporary custody of the child before the expiration of the seventy-two hours.

History: 1978 Comp., § 32A-3A-9, enacted by Laws 1993, ch. 77, § 71.

temporary conditional relinquishment of custody, 35 A.L.R.4th 61.

Am. Jur. 2d, A.L.R. and C.J.S. references.
— Right of parent to regain custody of child after

32A-3A-10. Voluntary placement; rights of parent.

Any parent, guardian or custodian whose child is in voluntary placement shall have the following rights with respect to the child:

- A. the right of reasonable visitation with the child;
- B. the right to be informed of changes in the child's school or of changes in the child's placement by the department; and
- C. the right of decision as to all nonemergency and nonroutine medical care provided for the child.

History: 1978 Comp., § 32A-3A-10, enacted by Laws 1993, ch. 77, § 72.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Denial of restriction of visitation rights to parent charged with sexually abusing child, 1 A.L.R.5th 776.

ARTICLE 3B

Families in Need of Court-Ordered Services

Sec.

32A-3B-1. Short title; purpose.

32A-3B-2. Definitions.

32A-3B-3. Protective custody; interference with protective custody; penalty.

32A-3B-4. Protective custody; restrictions; time limitations.

32A-3B-5. Notification to family; release from protective custody.

32A-3B-6. Place of custody.

Sec.

32A-3B-6.1. Indian child placement; preferences.

32A-3B-7. Protective custody hearing; time limitations.

32A-3B-8. Basic rights.

32A-3B-9. Change in placement.

32A-3B-10. Petition; endorsement of petition.

32A-3B-11. Petition; allegations.

32A-3B-12. Adjudicatory hearing; time limitations.

32A-3B-13. Conduct of hearings; penalty.

Habitually Truant ReportRECEIVED
VIA E-MAIL

School Year: 2006-2007

DEC 05 2007

District Name	Students Enrolled at 120th Day	Unexcused Absences	Number of Habitually Truant Students	Percent Habitually Truant
ALAMOGORDO	6,480	27,134	780	12.04%
ALBUQUERQUE	94,649	1,012,225	29,831	31.52%
ANIMAS	256	53	0	0.00%
ARTESIA	3,518	12,884	370	10.52%
AZTEC	3,203	10,558	258	8.05%
BELEN	4,755	32,349	1,004	21.11%
BERNALILLO	3,310	20,702.5	710	21.45%
BLOOMFIELD	3,101	16,215	444	14.32%
CAPITAN	561	1,478	46	8.20%
CARLSBAD	6,019	4,184	115	1.91%
CARRIZOZO	207	805	15	7.25%
CENTRAL CONS.	6,698	53,190	1,962	29.29%
CHAMA	456	1,443	28	6.14%
CIMARRON	530	43	0	0.00%
CLAYTON	560	1,094	24	4.29%
CLOUDCROFT	474	395	3	0.63%
CLOVIS	8,219	14,979.5	286	3.48%
COBRE CONS.	1,444	3,004	42	2.91%
CORONA	90	460	9	10.00%
CUBA	695	6,175.5	232	33.38%
DEMING	5,506	15,908	378	6.87%
DES MOINES	124	173	2	1.61%
DEXTER	1,105	2,300	72	6.52%
DORA	207	28.5	0	0.00%
ELIDA	141	5	0	0.00%
ESPANOLA	4,564	15,656	535	11.72%
ESTANCIA	1,052	2,845	62	5.89%
EUNICE	584	792	18	3.08%
FARMINGTON	10,096	35,186	836	8.28%
FLOYD	253	382	1	0.40%
FT SUMNER	320	1,390	42	13.12%
GADSDEN	14,052	62,525	1,720	12.24%

Dec 4, 2007

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SOURCE: Public Education Department

Habitually Truant Report

School Year: 2006-2007

District Name	Students Enrolled at 120th Day	Unexcused Absences	Number of Habitually Truant Students	Percent Habitually Truant
GALLUP	12,398	67,051	2,185	17.62%
GRADY	138	25	0	0.00%
HAGERMAN	450	1,614	39	8.67%
HATCH	1,418	5,506	173	12.20%
HOBBS	7,729	36,858	1,132	14.65%
HONDO	128	992	35	27.34%
HOUSE	133	537	41	30.83%
JAL	441	494	15	3.40%
JEMEZ MOUNTAIN	366	3,103.5	122	33.33%
JEMEZ VALLEY	482	1,705	49	10.17%
LAKE ARTHUR	162	924	28	17.28%
LAS CRUCES	23,662	154,497	4,788	20.23%
LAS VEGAS CITY	2,059	14,974.5	562	27.29%
LOGAN	238	14	0	0.00%
LORDSBURG	710	3,651	107	15.07%
LOS ALAMOS	3,544	20,572	668	18.85%
LOS LUNAS	8,670	86,139.5	2,995	34.54%
LOVING	576	995	22	3.82%
LOVINGTON	3,087	10,918	326	10.56%
MAGDALENA	451	989	23	5.10%
MAXWELL	104	32	0	0.00%
MELROSE	223	359.5	10	4.48%
MESA VISTA	454	3,602	134	29.52%
MORA	599	4,038	144	24.04%
MORIARTY	3,773	21,365	661	17.52%
MOSQUERO	42	47	1	2.38%
MOUNTAINAIR	351	1,140	45	12.82%
PECOS	769	1,663	33	4.29%
PENASCO	596	2,497.5	69	11.58%
POJOAQUE	1,984	3,976	114	5.75%
QUEMADO	182	946	21	11.54%

Habitually Truant Report

School Year: 2006-2007

District Name	Students Enrolled at 120th Day	Unexcused Absences	Number of Habitually Truant Students	Percent Habitually Truant
QUESTA	535	4,141	141	26.36%
RATON	1,464	3,354	100	6.83%
RESERVE	174	159.5	0	0.00%
RIO RANCHO	14,847	22,396	320	2.16%
ROSWELL	9,355	36,673.5	1,100	11.76%
ROY	70	123.5	1	1.43%
RUIDOSO	2,314	13,836.5	422	18.24%
SAN JON	153	460	11	7.19%
SANTA FE	13,419	49,725.5	1,492	11.12%
SANTA ROSA	663	13	0	0.00%
SILVER CITY	3,187	19,920.5	698	21.90%
SOCORRO	1,955	5,832	193	9.87%
SPRINGER	205	48	1	0.49%
TAOS	3,152	2,685.5	46	1.46%
TATUM	300	552	18	6.00%
TRUTH OR CONS.	1,465	6,419	202	13.79%
TUCUMCARI	1,057	3,222	71	6.72%
TULAROSA	1,011	4,640.5	150	14.84%
VAUGHN	101	716.5	30	29.70%
WAGON MOUND	157	420.5	12	7.64%
WEST LAS VEGAS	1,837	9,523	335	18.24%
ZUNI	1,520	15,257	449	29.54%
State totals:	325,233	2,007,906.5	60,159	18.50%

Executive Summary

In 2003, the Governor of New Mexico initiated a state Truancy Prevention Program to identify and implement successful programs for preventing truancy in schools. The goals of the state Governor's Truancy Prevention Program, as administered by the New Mexico Public Education Department (PED), are to:

- decrease truancy rates,
- decrease dropout rates, and
- increase attendance rates among students.

In academic year 2006-07, the PED funded seven school districts to implement this program. Major highlights of this year's evaluation are presented in the following box:

Highlights:

- 547 students completed a "New Mexico Youth: Views on Truancy" survey. Over half (56%) of these respondents said they had *never* cut class or skipped school. Over one-third (38%) said they had been truant.
- Most students agreed that truant students get worse grades, are more likely to have low-paying jobs as adults, and have parents who do *not* know when they are truant. Over half the students think teachers and parents *do* care when students are truant, and 46% feel their schools reward students who are not truant.
- Over half (52%) the students identify school-related factors, particularly "boring classes and/or uninterested teachers" as being the primary reasons for truancy.
- Over half (54%) felt the most effective way to prevent truancy was to reward students for improved attendance. Another 49% felt that if teachers provided more interesting and interactive classes this would improve attendance rates.
- Principals who responded to the survey said they took the following actions to decrease truancy: enhanced truancy policy enforcement, increased contact with parents, increased student and family accountability, and increased student motivation to attend classes. At post-intervention, 35% of the principals reported that their schools had lower truancy rates.
- Unlike students, principals do not tend to select school-related factors as the major reasons for truancy. Principals are more likely to select family-related factors, including: lack of parental guidance and supervision, non-supportive family attitudes toward education, single-parent homes, poverty, and a lack of understanding of attendance laws. Principals, at post-intervention, also felt that inconsistent procedures to deal with truancy were also at fault.
- Principals were also likely to prefer different methods for preventing truancy than students. Principals cited the following methods as more effective: having a school contact person to communicate with parents of truant students; stronger penalties for truant students; rewards for students with good attendance; making home visits to parents; and using truant officers.
- Principals provided brief significant change case studies that demonstrate how truancy prevention efforts can have an impact on individual students.

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MEMORANDUM OF UNDERSTANDING
BETWEEN CHILDREN YOUTH AND FAMILIES DEPARTMENT AND THE
PUBLIC EDUCATION DEPARTMENT

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made by and between the New Mexico Children Youth and Families Department (CYFD) and New Mexico Public Education Department (PED).

WHEREAS, there have been instances in which a juvenile charged with a serious offense, as cited in a delinquency petition, has been enrolled in a public school without the knowledge of school personnel; and

WHEREAS, in some cases these students may pose a threat to other students or to school personnel; and

WHEREAS, if school personnel were informed of the circumstances they may be able to provide assistance to the accused student to assist that student in continuing his or her education, provide necessary educational supports and supervision, and to take additional measures to provide for the safety of other students and staff; and

WHEREAS, the New Mexico Children's Code and the federal Family Educational Rights and Privacy Act restrict the dissemination of information about juveniles; and

WHEREAS, delinquency petitions are public records open to public inspection until sealed at the court of jurisdiction; and

WHEREAS, all persons, including juveniles, charged with serious crimes are presumed innocent until proven guilty; and

WHEREAS, a policy that governs the release to a public or private school, where permitted, of information contained in or related to a delinquency petition necessitates a balance between preserving the civil rights of the accused and ensuring the safety of other students and staff; and

WHEREAS, the constitution of New Mexico requires that a "uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained";

NOW THEREFORE, CYFD AND PED AGREE AS FOLLOWS:

I. RESPONSIBILITIES UNDER THE MOU

1. CYFD shall engage in negotiations with any public school district or charter school that desires it, in order to enter into a Memorandum of Understanding providing for the development and implementation of an education and

management plan for children who may pose a danger to themselves or to the community, and who are adjudicated or for whom a Petition has been filed alleging the following offenses: second degree murder; kidnapping, shooting at a dwelling place or occupied building or from a motor vehicle, dangerous use of explosives, criminal sexual penetration, aggravated arson, abuse of a child that results in great bodily harm or death of a child.

2. A Memorandum of Understanding negotiated between CYFD and a public school district or charter school will address the issues and responsibilities set forth in the attached document entitled, "Guidelines for Education and Management Plan" (Exhibit 1 to CYFD/ PED MOU).
3. PED shall facilitate the creation of any Memorandum of Understanding between CYFD and any public school district or charter school that desires it by notifying all New Mexico public school districts and New Mexico charter schools of the willingness of CYFD to engage in a Memorandum of Understanding.
4. PED shall collect data on which public school district or charter school has partnered with CYFD through an MOU to determine the benefits that have been derived from said agreement.
5. Nothing in this MOU shall be construed as limiting or expanding the statutory or regulatory responsibilities of the CYFD or the PED in performing functions beyond those granted to them by law; or as requiring any party to expend any sum in excess of its respective appropriations. Any activities involving obligation of funds will require separate agreements and shall be independently authorized by appropriate statutory authority.

II. TERM OF MOU

This MOU shall be effective upon execution by the parties and shall remain in effect until either party desires to renegotiate the terms or cancel the agreement. A party may terminate the agreement upon thirty (30) days written notice except where the cancellation is for cause, i.e. a material and significant breach of any of the provisions of this agreement. In the circumstances of a breach, this MOU may be cancelled upon delivery of written notice to the other parties.

III. AMENDMENT

This MOU shall not be altered, changed, or amended except by instrument in writing executed by the parties.

IV. GOVERNING LAW

The laws of the State of New Mexico shall govern this understanding.

In Witness Whereof, the parties to this MOU execute this agreement.

Veronica C. García, Ed.D.
Secretary of Education

Date

Dorian Dodson
Secretary of CYFD

Date

GUIDELINES FOR EDUCATION AND MANAGEMENT PLAN
(Exhibit 1- CYFD/ PED MOU)

RECEIVED
VIA E-MAIL

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WHEREAS, there have been instances in which a juvenile charged with a serious offense, as cited in a delinquency petition, has been enrolled in a public school without the knowledge of school personnel; and

WHEREAS, in some cases these students may pose a threat to other students or to school personnel; and

WHEREAS, if school personnel were informed of the circumstances they may be able to provide assistance to the accused student to assist that student in continuing his or her education, provide necessary educational supports and supervision, and to take additional measures to provide for the safety of other students and staff; and

WHEREAS, the New Mexico Children's Code and the federal Family Educational Rights and Privacy Act restrict the dissemination of information about juveniles; and

WHEREAS, delinquency petitions are public records open to public inspection at the court of jurisdiction; and

WHEREAS, all persons, including juveniles, charged with serious crimes are presumed innocent until proven guilty; and

WHEREAS, a policy that governs the release to a public or private school, where permitted, of information contained in or related to a delinquency petition necessitates a balance between preserving the civil rights of the accused and ensuring the safety of other students and staff; and

WHEREAS, the constitution of New Mexico requires that a "uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained";

WHEREAS, the Children, Youth and Families Department (CYFD) has entered into a Memorandum of Understanding with the Public Education Department under which it has agreed to negotiate an Education and Management Plan with interested public school districts and charter schools;

IT HAS BEEN DETERMINED THAT THE FOLLOWING GUIDELINES WILL BE UTILIZED TO DEVELOP AND NEGOTIATE "AN EDUCATION AND MANAGEMENT PLAN" WITH AN INDIVIDUAL

PUBLIC SCHOOL DISTRICT OR CHARTER SCHOOL THAT DESIRES
TO IMPLEMENT SUCH A PLAN.

1. The parties agree that parental involvement is necessary to maintain the safety of the alleged offending child and others, to support the child in successful pursuit of education, and to ensure adherence to the Education and Management Plan. Therefore, CYFD, through its local Juvenile Probation and Parole Office (JPPO) will work with the local school district or charter school to encourage parental involvement in the development of the plan on a voluntary or court ordered basis.
2. An Education and Management Plan will include a Safety Plan to ensure the safety of the alleged offending child, other students and school personnel and the protection of property, and will address the following:
 - a. Transportation of the alleged offending child to and from school;
 - b. Classroom behavior and interventions;
 - c. Access to school property after normal school hours;
 - d. Reporting requirements for the child to ensure adherence with the safety plan;
 - e. Extra-curricular activities;
 - f. Responsibilities for oversight of the child during school hours;
 - g. Establishment of a list of contacts who can assist in the interpretation and enforcement of the terms of the Safety Plan; and,
 - h. Consequences for failure to adhere to the Safety Plan.
3. The Education and Management Plan will set forth the roles and responsibilities of the JPPO in providing assistance to the local school district or charter school and support and oversight of the alleged offending child.
4. The Education and Management Plan will set forth the roles and responsibilities of the parent(s), guardian(s), or legal custodian(s) in the development, implementation, support and enforcement of the Education and Management Plan.
5. The Education and Management Plan will set forth the roles and responsibilities of school personnel in supporting the alleged offending child and implementing, overseeing and enforcing the Education and Management Plan.
6. The Education and Management Plan will establish transition and re-entry plans for the alleged offending child.
7. The Education and Management Plan will include provisions to ensure the confidentiality of the offending child, and others, and contain assurances that information in the Education and Management Plan will only

be shared with individuals essential to the implementation, oversight, and enforcement of the Education and Management Plan.

8. The Education and Management Plan will include assurances that the alleged offending child will not be subjected to unnecessary isolation, suspension, or expulsion, and that due process will be afforded in connection with any decision to isolate, suspend or expel the child.